IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,

JAIPUR BENCH, JAIPUR

1. Factory Manager, Mahalakshmi Mills v The Judge, Labour Court & Ors.
(D. B. Special Appeal (Writ) No. 142 / 1996)

2. Factory Manager, Mahalakshmi Mills v. The Judge, Labour Court & Ors.
(D. B. Special Appeal (Writ) No. 159 / 1996)

Date of Judgment: 29th May 2007

Hon'ble Mr. Justice R. M. Lodha
Hon'ble Mr. Justice R. S. Chauhan

Mr. Manoj Kumar Sharma, for the Appellant.
Mr. V. L. Mathur for the Respondents.

(Per R. S. Chauhan J):

Both these appeals arise out of common factual matrix and are inter-related to each other. Therefore, they are being decided by this common Judgment.

In the D. B. Special Appeal (Writ) No. 142/1996, the Appellant is aggrieved by Judgment and Order, both dated 1-11-1995, passed by a learned Single Judge of this Court and by Order dated 12-9-1989, passed by the Labour Court, Jaipur. In the D. B. Special Appeal (Writ) No. 159/1996 the Appellant is

aggrieved by Judgment dated 1-11-95 passed by the learned Single Judge, and the Order dated 12-9-1989 passed by the Labour Court, Jaipur. Through the Judgment/ Order dated 1-11-95, the learned Single Judge had upheld the Order dated 12-9-1989 passed by the Labour Court, Jaipur, wherein the Labour Court had allowed applications filed by the respondents under Section 33-C (2) of the Industrial Disputes Act, 1947 (‘the Act of 1947’, for short) and had directed the Appellant to pay extra-wages to the respondents for the overtime work done by them from June 1980 to June 1985. However, the learned Single Judge had modified the Orders dated 12-9-1989 with regard to period from which the interest of 12 % was payable to the respondents.

Briefly, the facts of the case are that the Appellant is a unit of National Textile Corporation (Delhi, Punjab & Rajasthan) Ltd. The Corporation is incorporated under the Companies Act, 1956 and has its registered office at New Delhi. It has a textile mill at Beawar, known as Mahalakshmi Mills, where the business of spinning and weaving of cloth is

carried out. At the Mill, the Appellant has two sets of workmen, besides others, namely the clerical staff and the Office Boys (the peons). The Mill has its Standing Orders. According to the Standing Orders, while the clerical staff is supposed to work for 7 hours, the Office Boys are suppose to work for 7 ½ hours. The Certifying Officer, under the Industrial Establishment (Standing Orders) Act, 1946 ('the Act of 1946', for short), has certified the Standing Orders applicable at the Mill. But, in order to improve the efficiency and performance of the Mill, in order to increase the production, on 22-6-1976, the Management entered into a Settlement with the sole registered union of employees, the Employees Association, Beawar, under Section 18 (1) of the Act of 1947. Under the Settlement (henceforth to be referred to as 'the Settlement of 1976', for short), the working hours of the clerical staff was increased from 7 hours to 8 hours, including half an hour for rest/ interval. The Management agreed to pay Rs. 50/- per month to the employees. However, it is pertinent to note that the Settlement of 1976 was with regard to the clerical staff and did not include the Office Boys. However, the working hours of the

Office Boys were also increased from 7 ½ hours to 8 hours. Vide order dated 18/30-9-1976, the Management granted Rs. 10/- per month, w. e. f. 15-9-1976, to the Office Boys as hard duty allowance. Subsequently, on 11-2-1980, the Management again entered into a second Settlement with the Employees Association, Beawar, whereby the payment of Rs. 50/- per month was reduced to Rs. 29.75/- per month. Interestingly, despite the fact that the working hours were increased from 7 hours to 8 hours, the Standing Orders prevalent in the Mill were not modified in accordance with the Act of 1946. Thus, according to the Standing Orders, the employees were supposed to work only for 7 hours a day.

In 1985, two different sets of employees, namely thirty members of the clerical staff and four Office Boys filed two different applications under Section 33-C (2) of the Act of 1947 before the Labour Court, Jaipur. According to them, presently the respondents before this court, the two Settlements made in 1976 and 1980 were not applicable to them as they were not members of the Employees Association, Beawar. Moreover,

under the Standing Orders they were supposed to work only for 7 hours, but they were working for 8 hours. Hence, they were entitled to extra-wages for the “overtime” done by them. They had requested the Management to pay the extra-wages for the overtime done by them, but their request did not elicit any reaction from the Management.

Likewise, according to the Office Boys, the Settlement of 1976 and 1980 did not cover them. Yet, still they were asked to work for 8 hours instead of 7 hours as warranted under the Standing Orders. Vide Order dated 18/30-9-1976 (Anx. R/2) they were paid Rs. 10/- per month as hard duty allowance. For the “overtime” done by them, they too were entitled to payment of extra-wages. Both the clerical staff members and the Office Boys requested that the extra-wages for overtime should be paid to them from June 1980 to June 1985.

The Appellant filed their reply and raised two preliminary objections: firstly, the working hours of the factory staff is laid down in the Factories Act, 1948 ('the Factories Act',

for short). According to Section 54 of the Factories Act, the workers can be asked to work for 9 hours a day. Since the workmen are working only for 8 hours a day, they are not working “overtime”. Hence, the question about payment of extra-wages for “overtime” does not even arise. Secondly, since the Management is not agreeable to make the payment for “overtime”, an industrial dispute should have been raised. Thus, an application under Section 33-C (2) of the Act of 1947 is not maintainable. In fact, an industrial dispute should have been referred to the Labour Court under Section 10 of the Act of 1947.

In order to support their case, the clerical staff workmen examined a single witness, Mr. Shankar Lal. In order to buttress their case, the Appellant examined two witnesses, namely Mr.Durga Prasad and Mr. Harish Chandra Sharma. On the other hand, in support of their case, the Office Boys examined Mr. Ram Gopal and Mr. Mohan Lal Sain. In the case of the Office Boys, the Appellant examined Mr. Harish Chand Sharma as their witness. Vide Orders dated 12-9-1989, the Labour Court

allowed the applications under Section 33-C (2) of the Act of 1947. It not only directed the payment of extra-wages to the workmen, but also directed that in case the payment is not made within three months, then each workman would be entitled to the payment of 12% per annum from an specified date till the date of actual payment.

Since the Appellant was aggrieved by the said Orders, they filed two separate writ petitions before this court. In the writ petition, the appellant as the Petitioner raised the same two contentions as raised by them before the Labour Court. However, vide Judgment dated 1-11-95, a detailed judgment passed in S.B. Civil Writ Petition No. 663/1990, the learned Single Judge has partly modified the Order dated 12-9-1989. While the Learned Single Judge has upheld the grant of extra-payment of wages for the overtime done by the respondents, the learned Single Judge has changed the date from which the interest of 12% is to be paid. Instead of the interest being paid from 3-10-1985 as directed by the Labour Court, the learned Single Judge has directed the interest to be paid from 12-9-

1989. He has also directed that no interest would be payable from 23-5-1990 to 1-11-1995, as during this period the stay granted by this court was in operation. In light of the detailed judgment passed in S. B. Civil Writ Petition No. 663/1990, in S. B. Civil Writ Petition No. 662/1990 the learned Single Judge has merely modified the Order dated 12-9-1989 qua the period for which the interest would be payable. Since the appellant is aggrieved by the Judgment/ Order dated 1-11-95 and by the Orders dated 12-9-1989, it has filed two different appeals before this court.

Mr. Manoj Kumar Sharma, the learned counsel for the Appellant, has raised four contentions before us: firstly, the Factories Act prescribes the maximum working hours as 9 hours a day. As the respondents are working only for 8 hours, therefore, they are not working “overtime”. Thus, they are not entitled for payment for “overtime”. Secondly, the Management had entered into a Settlement on 22-6-1976 with the Employees Association, Beawar. Under Section 18 (1) of the Act of 1947, the respondents are bound by the said Settlement. Thirdly, the

respondents have taken the benefit of the Settlement from 1976 to 1985. Therefore, they have acquiesced to the said Settlement. Lastly, the application under Section 33-C (2) is not maintainable. For, the proceeding under Section 33-C of the Act of 1947 is akin to an execution proceeding. It comes into play when any money is due to workmen from the employer under an award, or under a settlement or under the provisions Chapter V-A or Chapter V-B of the Act of 1947, or when any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. These circumstances are non-existent in the present case; the application under Section 33-C (2) is, thus, not maintainable. In fact, according to the learned Counsel, in the present case, the Management had denied the demand for payment of extra-wages for overtime to the workmen. Hence, an industrial dispute had arisen. The same should have been referred to the Labour Court under Section 10 of the Act of 1947. Hence, the Labour Court has erred in exercising its jurisdiction under Section 33-C (2) of the Act of 1947.

On the other hand, Mr. V. L. Mathur, the learned counsel for the respondents, has raised a large number of counter-arguments: firstly, the Appellant has Standing Orders which are certified under the Act of 1946. These Standing Orders are statutory in nature. According to the said Standing Orders, the respondents are supposed to work only for 7 hours a day and not for 8 hours a day.

Secondly, despite the Settlement of 1976, the Standing Orders have not been modified under Section 10 of the Act of 1946. Thus, the Standing Orders cover the field.

Thirdly, the Settlement cannot violate the Standing Orders. In case it does, it is non-est.

Fourthly, in the alternative, the Settlement of 1976 is not binding on the respondents, as they were not members of the Employees Association, Beawar. According to Section 18 (1) of the Act of 1947, the Settlement would be binding only on those who were parties thereto. Since the respondents were not parties

thereto, the Settlement is not binding on them.

Fifthly, while according to the Standing Orders, the workmen are supposed to work for 7 hours, they were working for 8 hours. Therefore, clearly they are working overtime for one hour. Thus, under Section 59 of the Factories Act, they are entitled to payment of extra-wages for the overtime period.

Sixthly, the Factories Act merely prescribes the upper limit of the working hours for the workmen. The employer is free to prescribe working hours less than the upper limit of 9 hours. In case he does so, then workmen who work more than the limit prescribed by the employer, they would be working "overtime". Hence, they would be entitled to extra-wages for the period of overtime. In order to support this contention, the learned counsel has relied upon the case of M/s Philips India Ltd v Labour Court, Madras (AIR 1985 SC 1034).

Seventhly, once the respondents are "entitled to receive from the employer any money or any benefit which is capable

of being computed in terms of money", then the case clearly falls within Section 33-C (2) of the Act of 1947. Hence, the application under the said section is maintainable.

Lastly, while exercising its power under Section 33-C of the Act of 1947, the Labour Court can examine the issue whether the workmen have worked overtime or not? Therefore, there is no industrial dispute for the Labour Court to examine under Section 10 of the Act.

We have heard the learned counsels for the parties and have examined the impugned Judgments and the impugned Orders.

The advent of the Industrial Revolution in 19th Century in Europe had unleashed market forces in which the workers were exploited as a class. The plight of workers was well depicted by writers like Charles Dickens and well articulated by Karl Marx. Their condition in India was no different—in fact, it was worse. Considering the exploitation of the workmen, considering their

pitiable condition, in order to protect them, in order to secure better working conditions and in order to ensure smooth industrial relationship between the employer and the workmen, in 1946, the Industrial Employment (Standing Orders) Act was passed. The Act was brought about so as to precisely define "the conditions of employment" and to ensure that the workmen knew the terms of employment. Prior to coming of the Act of 1946 into force, the conditions of employment were governed by contract. In many cases, the contract was not even reduced into writing. Thus, there was not only ambiguity about the terms and conditions, but it also led to industrial disharmony. Hence, the Legislature of the view that conditions of employments to which the workmen were subjected to, should be well defined and should be known to the workmen. With this object in mind, the Act of 1946 was enacted. Under the said Act, once the Standing Orders are certified by the Certifying Officer, the Standing Orders constitute the statutory terms of employment between the industrial establishment and the employees. Thus, they are binding on the employer and the employees.

Section 3 of the Act of 1946 imposes a duty on the employer to submit to the Certifying Officer the draft of the standing orders proposed by him for adoption in his industrial establishment. It further imposes a duty upon the employer to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

Section 10 of the Act of 1946 prescribes the duration and modification of Standing orders as under:

> 10. **Duration and modification of standing orders:**
>
> (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, or a trade union or other representative body of the workmen be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.
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> (2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the

Certifying Officer to have the standing orders modified and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen a certified copy of that agreement shall be filed along with the application.

(3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.

(4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

Section 13 of the Act of 1946 prescribes penalties and procedure as under:

13. Penalties and procedure:

(1) An employer who fails to submit draft standing orders as required by section 3, or who modifies his standing orders otherwise than in accordance with section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.

(2) An employer who does any act in contravention of the standing orders finally certified under this Act or his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

(3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.

(4) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this section.

These provisions of law and the principles annunciated above, bring out four aspects of the Standing Orders. Firstly, the Standing Orders contain "statutorily imposed conditions of service" and are binding upon the employer and the employees. Secondly, the Standing Orders can be modified on the basis of an agreement between the employer and the workmen, but strictly in accordance with the procedure contained in Section 10 of the Act of 1946. In case the Standing Orders are not modified in accordance with the Settlement between the employer and the workmen, the employer can be penalized under Section 13 of the Act of 1946. Lastly, till the Standing Orders are modified in accordance with Section 10 of the Act of 1946, they would continue to govern the relationship between the employer and employee. Thus, a settlement contrary to the Standing Orders would be non-est.

In the present case, according to the Standing Orders (Anx. R/5)

the workmen were required to work for only 7 hours. However, the employer and the Employees Association had entered into a Settlement on 22-6-1976 whereby the working hour was increased from 7 hours to 8 hours. But, despite the Settlement of 1976, the Standing Orders were not modified in accordance with Section 10 of the Act of 1946. Hence, the Settlement of 1976 was contrary to the Standing Orders that were prevalent in the Mill. Thus, the Settlement of 1976 is non-est. It is, therefore, not binding on the respondents. Since the Standing Orders are "statutorily imposed conditions of service" and are binding upon the employer and the employees, they would govern the working hours of the respondents. According to the Standing Orders, the respondents are required to work only for 7 hours. However, admittedly, they were working for 8 hours, including half an hour for rest/ interval. Thus, they were clearly working more than the prescribed working hours.

Mr. Sharma has contended that the respondents were not working "overtime", as the Factories Act prescribes 9 hours of working time for the workmen, but the respondents were working for only 8 hours; such a contention is untenable. In the case of M/s Philips

India Ltd (supra), the Hon'ble Supreme Court dealt with the Tamil Nadu Shops and Establishments Act, 1947 ('the Tamil Nadu Act of 1947', for short) that contained provisions similar to Sections 54 and 59 of the Factories Act. Section 14 of the Tamil Nadu Act of 1947 prohibited the employers from taking work from workmen for "more than eight hours in a day and forty-eight hours in any week". Section 31 of the said Act prescribed the rate of wages for overtime work. The issue which arose for consideration before the Apex Court was "what would be the rate of overtime allowance admissible to the employees of the establishments of the employer in each case situated in Tamil Nadu State for overtime work done in excess of the prescribed number of working hours by the employer and upto the number of working hours statutorily permitted? The Hon'ble Supreme Court noted that the word "overtime" has not been defined either in the Factories Act, or in the Tamil Nadu Act of 1947. Therefore, their Lordships noticed the dictionary meaning of the word. According to Collins English Dictionary the word "overtime" means a) work at regular job done in addition to regular working hours, b) time in excess of a set period, or c beyond the regular or stipulated time. The Hon'ble Supreme Court held, "Ordinarily, therefore, where an employer prescribes normal

working hours less than the maximum permitted by the statute and if it seeks to take work in excess of its own prescribed number of hours of work, the employer renders itself liable to pay overtime wages at any rate higher than the ordinary rate of wages."

Similarly, in the present case, Section 51 of the Factories Act states that "No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week." Section 54 lays down, "Subject to the provisions of Section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day: Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this section may be exceeded in order to facilitate the change of shifts." Section 59, on the other hand, prescribes the extra-wages for overtime as under:

> **59. Extra wages for overtime:**
>
> (1) Where a worker works in a factor for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
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> (2) For the purposes of sub-section (1) "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to,

but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece-rate basis, the time rate shall be equivalent to the daily average of their full-time earnings for the day on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be ordinary rates of wages of those workers:

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

Explanation.- For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of food grains and other articles admissible to standard family.

Explanation 1. - “Standard family” means a family consisting of the worker, his or her spouse and two children belong the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - “Adult consumption unit” means the consumption unit of a male above the age of fourteen years and the consumption unit of a female above the age of

fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.

(5) The State Government may make rules prescribing--

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food grains and other articles shall be computed ; and

(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section."

Clearly, Sections 51 and 54 of the Factories Act prescribe the upper limit for the working hours of a workman on weekly and daily basis respectively. The employer is free to prescribe working hours less than the statutory limits. The limit prescribed by the employer would be "the regular or stipulated time" or "the regular working hours". In case, the employee works more than the "regular working hours" or beyond the "regular or stipulated time", clearly the employee is working "overtime". Thus, under Section 59 of the Factories Act, he would be entitled to payment of extra-wages for the overtime done by him. Therefore, the contention raised by Mr. Sharma is without force.

Another contention raised by Mr. Sharma is about the non-

maintainability of the application under Section 33-C (2) of the Act of 1947. Section 33-C of the Act of 1947 reads as under:

> **33C. Recovery of money due from an employer.-**
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> (1)Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or , in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.
>
> Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer :
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> Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
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> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, them the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do he may, for reasons to be recorded in writing extend such period by such further period as he may think fit.
>
> (3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.
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> (4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).
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> (5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.
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> Explanation.- In this section "Labour Court" includes any Court constituted under any law relating to investigation and settlement of industrial dispute in force in any State."

The scope and ambit of Section 33-C is no longer res integra. In catena of cases the Hon'ble Supreme Court has discussed the parameters of the said provision. The provision was inserted in 1956 in order to give an individual workman a speedy remedy to enforce

his existing rights without being dependent upon the union to espouse his cause by raising an industrial dispute. An analysis of the provision reveals that sub-section (1) of Section 33-C deals with cases when money is due to a workman from an employer under an award, or settlement, or under the provisions of Chapter V-A or Chapter V-B of the Act of 1947. On the other hand, sub-section (2) of Section 33-C deals with cases where a workman is entitled to receive from the employer any money or benefit which is quantifiable in terms of money. Thus, sub-section (2) is wider in its scope and ambit than sub-section (1) of Section 33-C.

In the case of The Bombay Gas Co. Ltd v Gopal Bhiva & Ors (AIR 1964 SC 752), the Apex Court stated, “The proceedings contemplated by S. 33 C (2) are in many cases, analogous to execution proceedings, and the Labour Court which is called upon to compute in terms of money the benefit claimed by an industrial employee is, in such cases, in the position of an executing court.” Like an executing court, under Section 33-C the Labour Court too can inquire into the existence of the right and such an inquiry might be incidental to the main determination which has been assigned to the

Labour Court by sub-section (2). For, as Maxwell observed, “where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.”

In the present case, in light of the Standing Orders the respondents have worked overtime for half an hour. Since they were permitted half an hour of rest/ interval, the same is not being counted. Under Section 59 of the Factories Act, the respondents are entitled to receive the extra-wages for the overtime work done by them. Thus, the respondents are “entitled to receive from the employer money or benefit which is capable of being computed in terms of money”. Therefore, the application under Section 33-C is not only appropriate, but also desirable so as to prevent harassment of the workmen. Hence, the contention raised by Mr. Sharma about the non-maintainability of the application under Section 33-C is unacceptable.

Another contention raised by Mr. Sharma is about the Settlement of 1976 being applicable to the respondents. Although we have held the said Settlement to be non-est, but let us presume the

Settlement is a valid one. Is the Settlement then binding on the respondents? According to witness of the workmen, Mr. Ram Gopal, the workmen were not members of the Employees Association, Beawar. According to the witness for the Appellant, Mr. Durga Prasad the respondents were members of the said Association. Despite his undertaking given to the Labour Court that he would produce the necessary documentary evidence such as Register of Membership of the Union and the Receipt Book of the Union, he failed to do so. In the absence of such proof, the Labour Court rightly concluded that the workmen from the clerical staff were not members of the Employees Association—the union, which had entered into the Settlement of 1976.

According to Section 18 (1) of the Act of 1947, “A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement”. Admittedly, the Settlement of 1976 was reached “otherwise than in the course of conciliation

proceeding". Hence, it would be binding only on those who were members of the Employees Association. However, as the clerical staff workmen were not member of the Employees Association, the Settlement of 1976 would not be binding upon them. Moreover, the Settlement did not cover the Office Boys. Therefore obviously, it would not be binding on them. Hence, both the Labour Court and the Learned Single Judge have correctly concluded that the Settlement of 1976 is not applicable to the respondents.

Once the Settlement of 1976 is not binding on the respondents under Section 18 (1) of the Act of 1947, the question of acquiescing does not arise. In the case of The Jhagrakhan Collieries (P) Ltd v G. C. Agrawal, Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur & Ors (AIR 1975 SC 171), the Hon'ble Supreme Court held, "An implied agreement by acquiescence, or conduct such as acceptance of a benefit under an agreement to which the worker acquiescing or accepting the benefit was not a party, being outside the purview of the Act, is not binding on such a worker either under sub-section (1) or under sub-section (3) of Section 18." Therefore, the contention of Mr. Sharma that the respondents had

acquiesced to the Settlement of 1976 and are thus bound by it, is also unacceptable.

From the above discussion, it is obvious that the respondents were entitled to receive extra-wages for the overtime work done by them from June 1980 to June 1985. Moreover, the application under Section 33-C (2) of the Act of 1947 is maintainable. Therefore, neither the Orders dated 12-9-1989, nor the Judgment / Order dated 1-11-1995 can legally be faulted. Thus, these appeals have no force. They are, hereby, dismissed. There shall be no order as to costs.

R. S. Chauhan J. R. M. Lodha J.